26522

(17,771.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 23, 1900.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. A. Williams, plaintiff, and Edgar Fears *et al.*, defendants, said case being a writ of *habeas corpus*, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Con-
2 stitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said R. A. Williams, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, N. D. Georgia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of May, in the year of our Lord one thousand nine hundred.

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern Dist. of Georgia.

Allowed by—
T. J. SIMMONS,
Chief Justice of the Supreme Court of the State of Georgia.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

3 UNITED STATES OF AMERICA, *ss:*

To Edgar Fears, sheriff, and R. B. Aycock, jailer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein R. A. Williams is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thos. J. Simmons, chief justice of the supreme court of Georgia, this the 15th day of May, in the year of our Lord one thousand nine hundred.

T. J. SIMMONS,
Chief Justice of the Supreme Court of Georgia.

4 On this 17th day of May, in the year of our Lord one thousand nine hundred, personally appeared George P. Martin before me, the subscriber, J. C. Barton, a notary public, *ex officio* justice of the peace in & for Morgan county, Georgia, and makes oath that he delivered a true copy of the within citation to Edgar Fears, sheriff, and R. B. Aycock, jailer, and served E. W. Butler, county solicitor of Morgan county court, with a copy of the same by leaving it at the residence of said E. W. Butler.

GEO. P. MARTIN, *L. C.*

Sworn to and subscribed the 17th day of May, A. D. 1900.

J. C. BARTON,
N. P. & ex Off. J. P.

Filed in office May 18, 1900.

Z. D. HARRISON,
C. S. C., Ga.

Due & legal service of the within is hereby acknowledged and copy of same waived.

This May 18th, 1900.

J. M. TERRELL,
Att'y Gen'l of Georgia.
H. G. LEWIS,
Sol. Gen'l, Ocmulgee Circuit.

5 In the Supreme Court of the State of Georgia.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, *et al.* } *Habeas Corpus.*

Petition for Writ of Error.

To the Honorable Thomas J. Simmons, chief justice of the supreme court of the State of Georgia:

Your petitioner, R. A. Williams, respectfully shows:

That on the 11th day of April, A. D. 1900, the supreme court of

the State of Georgia entered a judgment in a case in which your petitioner was appellant and Edgar Fears, sheriff, and R. B. Aycock, jailer, were appellees.

That said supreme court of the State of Georgia is the highest court of the State of Georgia in which a decision in said suit could be had, and that said judgment so rendered was against your petitioner, and was a final judgment in said cause.

That in said judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That said cause and the judgment of the supreme court of the State of Georgia drew in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question

6 the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission.

That your petitioner desires to have said judgment of the supreme court of Georgia reviewed and the questions therein raised passed upon by the Supreme Court of the United States.

Wherefore your petitioner prays the granting of a writ of error directing the clerk of the supreme court of Georgia to certify and send up the record in said case to the Supreme Court of the United States within thirty days from this date, that, the record and proceedings being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Greensboro, Ga.

JAS. DAVISON,
Attorney for Petitioner.

The foregoing petition considered, ordered that the writ be allowed upon the applicant, R. A. Williams, giving bond in the sum of one hundred dollars, conditioned to prosecute the same and pay the costs thereof, and upon his otherwise complying with the law

7 in such cases provided the clerk of the supreme court of Georgia is hereby required to make out a transcript of the record and transmit the same, under the seal of this court, to the Supreme Court, at Washington, within thirty days from this date, for such further action as may be proper in the premises.

Ordered, further, that this writ of error shall operate as a super-

sedeas until the final hearing is had in the Supreme Court of the United States.

This the 15 day of May, A. D. 1900.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office May 18, 1900.

Z. D. HARRISON, *C. S. C., Ga.*

8 Know all men by these presents that we, R. A. Williams, as principal, and —— ——, as sureties, are held and firmly bound unto Edgar Fears *et al.*, for the use of the officers of the United States Supreme Court, in the full and just sum of one hundred dollars, or such other sum as may be required for costs, to be paid to the said Edgar Fears *et al.*, for the use of the said officers, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of May, in the year of our Lord one thousand nine hundred.

Whereas lately, at a hearing in a suit depending in said court between R. A. Williams, plaintiff in *habeas corpus*, and Edgar Fears *et al.*, defendants in *habeas corpus*, a judgment was rendered against the said R. A. Williams by the supreme court of Georgia, from which judgment appeal is hereby entered to the Supreme Court of the United States, and the said R. A. Williams having obtained writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edgar Fears *et al*, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said R. A. Williams shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

R. A. WILLIAMS. [SEAL.]
R. DILLON. [SEAL.]

Sealed and delivered in presence of—

W. B. WEISIGER,
D. C. U. S. Cir. Ct., W. D. T.

Approved by—

T. J. SIMMONS,
Chief Justice Supreme Court of Ga.

9 STATE OF TENNESSEE, }
Shelby County. }

I do hereby certify that R. Dillon, the security on the enclosed bond, is worth $100 *dollars* over and above all liabilities, and that he is ample and solvent as security.

Witness my hand and seal this May 9th, 1900.

{Seal of the Circuit Court of the United States for the District of West Tennessee.}

W. B. WEISIGER,
D. C. U. S. Cir. Ct., W. D. T.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

10 In the Supreme Court of the State of Georgia.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, *et al.* } *Habeas Corpus.*

Assignments of Error.

The appellant, R. A. Williams, brings error from the judgment of the supreme court of Georgia affirming the judgment of the judge of the superior court, and, specifically excepting to the same, makes the following assignments of error thereon:

1. Said judgment is contrary to the law.

2. Said judgment is contrary to evidence.

3. Said judgment of affirmance declares that "(1) the term 'emigrant agent' means a person engaged in hiring laborers in this State to be employed beyond the limits of the same." Said judgment is contrary to and in conflict with article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States, the following words of said judgment being specifically assigned as error therefor: "The imposition of a tax upon such a person is not a regulation of interstate commerce"—that is to say, the imposition of a tax upon "a person engaged in hiring laborers in this State to be employed beyond the limits of the same" is not a regulation of interstate commerce. Appellant expressly contends that such a tax is a regulatian of interstate commerce.

4. Said judgment is contrary to and in conflict with the
11 fourteenth amendment to the Constitution of the United States, because the law declared valid by said judgment is an indirect effort to restrict the right of the citizen to move from one State to another and abridges the privileges and immunities of the citizen.

(*a*.) Said judgment is further assigned as error and as being in conflict with the fourteenth amendment to the Constitution of the United States, (1) because it impairs the natural right of the laborer

to labor; (2) because it is a tax on the laborer and is class legislation, aimed entirely at laborers, and (3) because it applies only to a class of laborers, to wit, those laborers who seek labor beyond the State.

(*b.*) Said judgment is further assigned as error, and is charged as being in conflict with the fourteenth amendment to the Constitution of the United States, because the law under review imposes a tax which is prohibitory in amount (to wit, $500.00) on the person who hires a laborer to work beyond the State and exempts the person who hires a laborer to work within the State. The business being hiring for employment, the situs of the employment does not constitute a difference which separates the two into distinct classes, so as to make lawful the taxing of one and the exemption from taxation of the other.

The words of the supreme court of Georgia used in said judgment of affirmance and specially assigned as error above are as follows:

"3. A law imposing a tax upon such a person is not such a restriction upon the right of a citizen to move from one State to
12 another as that it abridges the privileges or immunities of citizens of the United States within the meaning of the fourteenth amendment to the Constitution of the United States; nor is such a law a discrimination in favor of persons hiring laborers to be employed within the limits of the State as to amount to a denial of the equal protection of the laws within the meaning of that amendment."

5. Said judgment is contrary to and in conflict with article 4, section 2, of the Constitution of the United States, because the law imposing the tax in question was intended to and does prevent the non-resident employer from obtaining labor in Georgia, because it discriminates against the non-resident and in favor of the resident and imposes a burden on the employer without the State, thereby giving the citizen of Georgia an unfair advantage over the non-resident. It is a plain denial to the non-resident of the equal protection of the law, in that it taxes the efforts of the non-resident citizen to obtain labor in Georgia and exempts the resident citizen from such burden.

This assignment of error, as well as all the assignments of error heretofore set out, was made in the petition for *habeas corpus*, and all of said assignments of error were insisted upon at the hearing of this case in the supreme court of Georgia.

Wherefore the appellant, R. A. Williams, prays that these assignments of error may be considered, and that the said Supreme Court of the United States may cause further to be done
13 herein to correct the same what of right and according to the laws and customs of the United States should be done.

JAS. DAVISON,
Attorney for Petitioner.

P. O., Greensboro, Georgia.

The foregoing assignments of error considered and allowed. ordered that the same be filed as a part of the record in this case. This the 15 day of May, 1900.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Filed in office May 18, 1900.
Z. D. HARRISON,
C. S. C., Ga.

4 R. A. WILLIAMS } *Habeas Corpus.* Morgan
v. } Superior Court, Jan.
EDGAR FEARS, Sheriff, and AYCOCK, Jailer. } 16th, 1900.

Original Bill of Exceptions.

Be it remembered that on the sixteenth day of January, A. D. 900, the petition for *habeas corpus* in the case of R. A. Williams *ersus* Edgar Fears, sheriff, and R. B. Aycock, jailer, the same being petition for *habeas corpus* by R. A. Williams, addressed to the udge of the superior court of the Ocmulgee circuit, alleging that petitioner was illegally restrained of his liberty by the defendants named, came on to be heard, pursuant to order, at chambers, before his honor Judge John C. Hart, judge of the Ocmulgee circuit, when, after hearing said case, the *habeas corpus* was denied, and an order passed remanding petitioner, R. A. Williams, to the custody of the sheriff.

To said ruling and judgment denying the writ of *habeas corpus* and refusing to declare the law under which plaintiff is held unconstitutional and void plaintiff, R. A. Williams, excepts and specially assigns the same as error. Plaintiff assigns as special error the judgment complained of for each and all the reasons set out in the petition for *habeas corpus*, to wit, that the warrant under which plaintiff was held was issued under a law that is contrary to the Constitution of the State of Georgia and of the United States, and the same is therefore void.

15 Plaintiff specifies as portions of the record material to a clear understanding of the errors complained of (1) the original petition for *habeas corpus*, (2) the answer thereto filed by the defendants, and (3) the judgment and order of said judge refusing the *habeas corpus* and remanding plaintiff to the custody of the law.

Plaintiff specifies as evidence material to a clear understanding of the errors complained of: The case was tried upon the issues of fact and law raised by the petition and answer, and there was no dispute between the parties as to the facts, but said petition and answer, sworn to and now a part of this record, contain all the evidence material to a clear understanding of the errors complained of.

And now, within the time allowed by law, comes the said R. A. Williams, plaintiff, and presents this his bill of exceptions, and prays that the same be signed and certified.

P. O., Greensboro, Ga.

JAS. DAVISON,
Attorney for Plaintiff.

I do certify that the foregoing bill of exceptions is true and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Morgan county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified and certify the same as such, and cause the same to be transmitted to the Supreme Court, to the October term, 1899, now in session, that the errors alleged to
16 have been committed may be considered and corrected.

This the 3rd day of February, A. D. 1900.

JNO. C. HART,
Judge Superior Courts, O. C.

GEORGIA, }
Morgan County. }

I hereby certify that the foregoing is the true, original bill of exceptions filed in this office in the case of R. A. Williams *vs.* Edgar Fears, sheriff, and R. B. Aycock, jailer, therein referred to, and that a copy thereof has been made and is now of file in this office.

Witness my signature and seal of this court this Feb'y 13th, 1900.

[SEAL.] CHAS. W. BALDWIN, *Clerk.*

Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived. This the 5th day of February, 1900.

H. G. LEWIS, *Sol. Gen'l.*
E. W. BUTLER,
Co. Sol., M. C.

Feb'y 6, 1900.

(Indorsed on cover:) No. 23. Ocmulgee. Supreme court of Georgia, October term, 1899. R. A. Williams *v.* Fears, sheriff, *et al.* *Habeas corpus.* Original bill of exceptions. Filed in office this Feb'y 12, 1900. Chas. W. Baldwin, clerk superior court Morgan county. Filed in office Feb'y 14, 1900. Logan Bleckley, D. C. S. C. Ga.

17 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the original bill of exceptions in the case therein stated as appears from said original now of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

18 Morgan Superior Court, Jan. 16th, 1900.

R. A. WILLIAMS
v.
EDGAR FEARS, Sheriff, and AYCOCK, Jailer. } *Habeas Corpus.*

Transcript of the Record in said Case.

Original Petition for *Habeas Corpus.*

R. A. WILLIAMS
v.
FEARS, Sheriff. } *Habeas Corpus.* Morgan County, Madison, Georgia, January —, 1900.

STATE OF GEORGIA,
Morgan County.

To the Honorable John C. Hart, judge of the superior court of the Ocmulgee circuit:

The petition of R. A. Williams respectfully represents:

First. That petitioner is unlawfully restrained of his liberty (2) by Edgar Fears, sheriff, and R. B. Aycock, jailer, of Morgan county, Georgia, in the common jail of said county, at Madison, Georgia.

Second. The cause of said restraint is a warrant charging petitioner with a violation of the act of the General Assembly of 1898, page 24, sec. 2, par. "tenth," taxing emigrant agents, and petitioner was arrested by said Fears, sheriff, on the 14th day of January, 1900, by virtue of said warrant. It is not within the power of petitioner to annex a copy of said warrant.

Third. The restraint of petitioner in the manner shown is
19 illegal, because sec. 2, par. "tenth," page 24, act of the General Assembly of 1898, upon which said warrant is based and by virtue of which this arrest was made, is unconstitutional, null, and void.

(1.) Said act conflicts with and is in violation of art. 1, sec. 8 (3), (Code, 5974) of the Constitution of the United States; with art. 1, sec. 9 (Code, 5979), of the Constitution of the United States; with art. 4, sec. 2 (Code, 6003), and with the 14th amendment (Code, 6030) of the Constitution of the United States.

(2.) Said act also conflicts with and is in violation of par. 25, art. 1 (Code, 5722); with (2) art. 1, sec. 4, par. 1 (Code, 5732); with (3) art. 1, sec. 4, par. 2 (Code, 5733); with (3) art. 1, sec. 5, par. 2 (Code, 5735); with (4) art. 1, sec. 1, par. 3 (Code, 5699); with (5) art. 3, sec. 7, par. 8 (Code, 5771), and with (6) art. 7, sec. 2, par. 1 (Code, 5883), of the constitution of the State of Georgia.

Wherefore petitioner prays that your honor grant the writ of *habeas corpus*, requiring the said Edgar Fears, sheriff, and R. B. Aycock, jailer, to bring the said papers under which he claims authority to act, and to bring the body of your petitioner before you, at a time and place to be specified in the writ, for the purpose of examination into the cause of the detention.

R. A. WILLIAMS.

JAS. DAVISON,
Attorney for Petitioner.

STATE OF GEORGIA, }
Morgan County. }

Personally comes Jas. Davison, att'y, etc., for R. A. Williams, who, being duly sworn, deposes and says that the allegations
20 contained in the foregoing petition are true.

JAMES DAVISON.

Sworn to and subscribed before—
JNO. C. HART.

This the 15th day of January, 1900.

STATE OF GEORGIA, }
Morgan County. }

To Edgar Fears, sheriff, and R. B. Aycock, jailer:

You are hereby commanded to produce the body of R. A. Williams, alleged to be illegally detained by you, together with the cause of the detention, before me, on the 16 day of January, 1900, at the hour of 11 o'clock, at Union Point, Georgia, then and there to be disposed of as the law directs.

Given under my hand and official signature this the 15 day of January, 1900.

JNO. C. HART,
Judge S. C., O. C.

Due and legal service of the foregoing petition and order acknowledged; copy, service, and all further notice and service is waived.

This January 15th, 1899.

R. B. AYCOCK, *Jailer.*
EDGAR FEARS,
Sheriff, M. C.

Answer to Habeas Corpus.

In re R. A. WILLIAMS } *Habeas Corpus.* Morgan County, Georgia,
v. } January 16, 1900.
EDGAR FEARS, Sh'ff. }

Before his honor Jno. C. Hart, judge of the Ocmulgee circuit.

21 STATE OF GEORGIA, }
County of Morgan. }

And now come Edgar Fears, sheriff of said State and county, and R. B. Aycock, deputy sheriff of said State and county and the jailer at Madison, Morgan Co., Ga., respondents in the above-stated *habeas corpus*, and, answering the writ served upon, say:

1st. Respondent Fears says that on January 13, 1900, a warrant issued by the county court of Morgan county, Ga., based upon an affidavit made by L. T. Penick, the tax collector, charging R. A. Williams with the offense of acting as an emigrant agent in Morgan

county without a license, was placed in this respondent's hands by H. W. Baldwin, the county judge of said county; that in obedience thereto this respondent, as sheriff of said county, on Jan. 14, 1900, arrested the body of said R. A. Williams, and said Williams failing to give bond, or demand a committal trial, or a trial on the issues of the warrant in the county court, then in session, based upon an accusation to be framed upon said affidavit, and said arrest being made on said Jan. 14, 1900, at night, the same being Saturday of the week, and the next day Sunday, the respondent delivered the custody of said Williams to R. B. Aycock, the jailer of said county of Morgan, to be safely kept until discharged by due process of law.

This respondent attaches to this his answer the original affidavit and warrant which he served, with all the entries thereon, and makes the same a part of this answer.

2nd. Respondent R. B. Aycock says that on Sunday morning, about the hour of 4 a. m., Edgar Fears, as sheriff of said county, delivered to this respondent, as jailer of said county, the body

22 of R. A. Williams, together with the affidavit and warrant described in the 1st section of this answer; that this respondent incarcerated said Williams in the common jail of the county of Morgan and now detains said Williams.

3rd. Both respondents herewith produce before your honor the body of said Williams, as required in the order of said *habeas corpus* of your honor.

4th. Respondents respectfully submit that they sought to discharge their duties under the law as they understood and knew them and await your honor's further orders in the premise-.

Respectfully submitted Jan. 16, 1900.

E. W. BUTLER,
Co. Sol., M. C., Attorney for Respondents.

GEORGIA, }
Morgan County. }

We, Edgar Fears, sheriff, and R. B. Aycock, jailer, do swear that the above and foregoing answer is true and correct.

Sworn to and subscribed before me 16th day of January, 1900.

EDGAR FEARS.
R. B. AYCOCK.

Sworn to and subscribed before me Jan. 16th, 1900.
H. W. BALDWIN, *Co. Judge.*

(Copy of warrant attached.)

STATE OF GEORGIA, }
Morgan County. }

Personally came L. T. Penick, who on oath says that to the best of his knowledge and belief R. A. Williams did on the 10th

23 day of January, 1900, in the county aforesaid, commit the offense of acting as emigrant agent without a license, and

deponent makes this affidavit that a warrant may issue for his arrest.

L. T. PENICK.

Sworn to and subscribed before me this the 13th day of Jan'y, 1900.

H. W. BALDWIN, *Co. Judge.*

GEORGIA, }
Morgan County. }

To the sheriffs, *his* deputies, the bailiffs, or any lawful constable of said State:

L. T. Penick makes oath before me that R. A. Williams, on the 10th day of January, 1900, in the county aforesaid, did commit the offense of acting as emigrant agent without license. You are therefore commanded to arrest the said R. A. Williams and bring him before me, to be dealt with according to law.

H. W. BALDWIN,
County Judge, M. C.

Judgment and Order of the Court.

In re R. A. WILLIAMS, Petitioner, &c.,
v.
EDGAR FEARS, Sheriff, &c., and R. B. AYCOCK, Jailer, Respondents. } *Habeas Corpus.*

Before his honor John C. Hart, judge of the Ocmulgee circuit, Morgan county, Ga.

The above stated matter having this day come on for a hearing before me, under the petition and answers, after hearing argument, it is considered, ordered, and adjudged the petition as prayed be be denied. Ordered further that the custody of said R. A.
24 Williams be retained by said Edgar Fears, sheriff, under the warrant from Morgan county court, until discharged by due process of law.

At Union Point, Ga.
This January 16, 1900.

JNO. C. HART,
Judge S. C., O. C.

STATE OF GEORGIA, }
Morgan County. }

I, Chas. W. Baldwin, clerk of the superior court of Morgan county, do hereby certify that the foregoing seven pages contain a true and complete transcript of such parts of the record in the case of R. A. Williams *v.* Edgar Fears, sheriff, and R. B. Aycock, jailer, as are in the bill of exceptions specified.

Witness my signature and the seal of said court, hereto affixed this the 13 day of February, A. D. 1900.

[SEAL.] CHAS. W. BALDWIN, *Clerk.*

No. 23. Ocmulgee. Supreme court of Georgia, October term, 1899. R. A. Williams *v.* Fears, sheriff, *et al.* *Habeas corpus.* Transcript of the record. Filed in office Feb'y 14, 1900. Logan Bleckley, D. C. S. C. Ga.

24½ Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true copy of the transcript of record in the case therein stated, as appears from said transcript now on file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

25 Ocmulgee, Oct. T., 1899.

WILLIAMS
v.
FEARS, Sheriff, *et al.* } No. 23.

By the Court, per COBB, *J.*:

1. The term "emigrant agent," in the general tax act of 1898, means a person engaged in hiring laborers in this State to be employed beyond the limits of the same.

2. The imposition of a tax upon such a person is not a regulation of interstate commerce.

3. A law imposing a tax upon such a person is not such a restriction upon the right of a citizen to move from one State to another as that it abridges the privileges or immunities of citizens of the United States within the meaning of the fourteenth amendment to the Constitution of the United States.

Nor is such a law a discrimination in favor of persons hiring laborers to be employed within the limits of the State as to amount to a denial of the equal protection of the laws within the meaning of that amendment.

The case of Shepperd *v.* Commissioners, 59 Ga., 535, upon a review thereof, is affirmed.

4. Nor is such a law violative of any provision of the constitution of this State.

26 COBB, *J.*:

Williams was arrested upon a warrant charging him with "the offense of acting as emigrant agent without a license." He made application to the judge of the superior court of the Ocmulgee circuit for a writ of *habeas corpus*, alleging that the warrant under which he was arrested charged him with a violation of that provision of the general tax act of 1898 which imposed "upon each emigrant agent or employer or employee of such agents doing business in this State the sum of five hundred dollars for each county

in which such business is conducted." Acts 1898, p. 24. He further alleged that the law which he was charged with having violated was in conflict with certain provisions of the constitutions of the United States and of the State of Georgia, enumerating in the application the various clauses of which the act was alleged to be violative. The writ of *habeas corpus* was issued, and on the day fixed for the hearing the officer having the accused in custody appeared, produced the prisoner, and answered that he had him in custody under a warrant of the character alleged. No evidence was offered, and the judge, after hearing argument upon the application and answer, remanded the prisoner to the custody of the officer having him in charge, to be held by him until discharged by due process of law. To this ruling the accused excepted.

1. The tax act of 1898, which embraces the tax in the language above quoted, provides that before any person shall be authorized to carry on the business of an emigrant agent he shall go
27 before the ordinary of each county in which such agent proposes to do business, and register his name and place of business and at the same time pay the tax to the tax collector. If he fails to register with the ordinary he is guilty of a misdemeanor. Acts 1898, pp. 24, 27. The warrant was issued upon an affidavit charging the accused with having violated the above-quoted provision of the tax act. It does not distinctly appear whether he is charged with having done business without registering or whether having registered he carried on the business without paying the tax. As an affidavit to authorize the issuance of a warrant need not set forth the offense with the same particularity required in indictments, the charge in the affidavit, although general in its nature and to some extent indefinite, would be sufficient to authorize the issuance of a warrant under the laws of this State. Williams *v.* The State, 107 Ga., 693; Brown *v.* The State, — Ga. —; 34 S. E., 1031. It is immaterial to a consideration of the questions involved in the present case whether the accused was charged with having carried on the business of an emigrant agent without having registered or without having paid the tax, for the reason that if the provision of the tax act imposing the tax is unconstitutional he cannot be punished for a failure to do either.

It becomes necessary at the outset to determine what is meant by the term emigrant agent as used in the above-quoted provision of the tax act. An emigrant is defined to be: "One who emigrates or quits one country or region to settle in another."—Web. Internat.
28 Dict. "An emigrant is one who quits his country for any lawful reason, with a design to settle elsewhere, and takes his family and property with him."—10 Am. & Eng. Enc. Law (2nd ed.), 1042. To emigrate is "to remove from one country or State to another for the purpose of residence."—Web. Internat. Dict. In the absence of a contrary reason to be found in the legislation of this State, the word emigrant would be given its ordinary meaning, and therefore an emigrant agent doing business in this State would be held to be one engaged in the business of removing, or inducing or assisting to remove, persons domiciled in this State to another

country or State for the purpose of acquiring there a new residence. Is there anything in the legislation of this State requiring that the term emigrant agent should be given a different meaning? The term appears for the first time in an act passed in 1876 (Acts 1876, p. 17), which declared that any person carrying on the business of an emigrant agent in this State without having first obtained a license therefor from the ordinary, for which he should pay the sum of $100, should be guilty of a misdemeanor. The term emigrant agent was by this act defined to be "any person engaged in hiring laborers in this State, to be employed beyond the limits of the same." In 1877 (Acts 1877, p. 120), an act was passed which declared that "it shall not be lawful for any emigrant agent or agents to solicit or procure emigrants to leave the State, or to act in the capacity of emigrant agents for said purpose," without procuring a license from the tax collector in each county in which such agent proposed to do business, for which he should pay the sum of $500. It is unnecessary
29 in the present case to determine whether either or both of the acts last referred to are still of force, as the provision of the tax act of 1898 is the only subject of attack. We look to these acts, therefore, merely for the purpose of ascertaining the meaning to be given to the term emigrant agent as used in the act of 1898. The term was defined in the act of 1876, and this definition has never been changed. The act of 1877 imposed a tax upon emigrant agents—that is, persons engaged in hiring laborers to go beyond the limits of the State—who should solicit or procure emigrants—that is, persons leaving the State for the purpose of changing their residence—to leave the State. In other words, the act of 1876 imposed a tax upon persons who should be engaged in the business of hiring laborers to leave the State, and the act of 1877 simply imposed an additional tax upon such persons if they should also be engaged in soliciting or procuring persons to change their residence from this State to another. In the light of the definition given in the act of 1876 and of the fact that the act of 1877 did not in any way undertake to change this definition, no other construction than the one above indicated can properly be given to the latter act. When, therefore, in subsequent legislation, the General Assembly used the term emigrant agent with nothing to indicate what was meant by the term, it will be presumed that it had in mind the definition theretofore given to the term. In all of the general tax acts passed after the act of 1877 language similar to that above quoted from the act of 1898 was employed, and it will be held
30 that in those acts the legislature intended by the use of the words emigrant agent to impose a tax upon persons engaged in the business of "hiring laborers in this State to be employed beyond the limits of the same."

The act of 1877 was carried into the Code of 1882, and, notwithstanding the act of 1876 was omitted from that code, the definition of emigrant agent, as contained in the latter act, was therein embraced. Code of 1882, sec. 4598 (*a*), (*b*), (*c*). It was evidently the opinion of the codifiers that the act of 1877 repealed the act of 1876 except so far as the definition of emigrant agent was concerned.

Both the act of 1876 and the act of 1877 were omitted from the Code of 1895, the only reference to either act being contained in section 601 of the penal code, which provides that "any person who shall solicit or procure emigrants, or shall attempt to do so, without first procuring a license as required by law, shall be guilty of a misdemeanor." This section was taken from the act of 1877, but the words "any person" were substituted for the words "any emigrant agent" used in that act. It is, however, unnecessary in this case to determine what effect is to be given to this section.

2. This brings us down to that provision of the general-tax act of 1898, above referred to, the validity of which is assailed in the present case. It is to be noted that the acts of 1876 and 1877 provided for a license, while the tax acts provide for a tax upon occupation, these acts describing the tax imposed upon emigrant
31 agents as a specific tax, and that occupation being embraced in the act along with other occupations of various character; and the act distinctly recites that it is passed for the purpose of collecting a tax for the support of the government and the public institutions, for educational purposes, and to pay the public debt. It thus being clear that the sum required to be paid is a tax upon an occupation, and not a license to do business, the question as to whether it is so excessive as to amount to a prohibition of the carrying on of the business referred to is not involved in this case, nor is such a question at all raised in the present case.

Giving to the term emigrant agent the definition set forth in the act of 1876, the question to be now considered is whether the State has the power to impose a tax upon a person engaged in that occupation. It is contended by counsel for plaintiff in error that the State has no such power, and in support of this it is argued that the imposition of such a tax is in violation of various provisions of the Constitution of the United States and of the State of Georgia. It is said that the law is violative of that provision of the Constitution of the United States in which the power is given to Congress to regulate commerce among the several States. If the act imposes a tax upon persons engaged in commerce among the States, it is a regulation of such commerce and is void. Such a tax is in effect a tax upon the business itself. This has been so repeatedly ruled by the Supreme Court of the United States that it will not at this day be
32 questioned. Brown *v.* Maryland, 12 Wheat., 419; Robbins *v.* Shelby Taxing Dist., 120 U. S., 489; Le Loup *v.* Port of Mobile, 127 U. S., 640; McCall *v.* California, 136 U. S., 104; Crutcher *v.* Kentucky, 141 U. S., 47; Brennan *v.* Titusville, 153 U. S., 289. Is the law under consideration a regulation of interstate commerce? What is commerce? What does that term as used in the Constitution of the United States include? Perhaps the earliest definition of the term to be found in the reports of the United States Supreme Court is that given by Mr. Chief Justice Marshall in Gibbons *v.* Ogden, 9 Wheaton, 1. On page 188 the Chief Justice said: "Commerce undoubtedly is traffic, but it is something more. It is intercourse. It describes the intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules

for carrying on that intercourse;" and again he says, "Commerce includes every species of commercial intercourse between the United States and foreign nations." It was decided in that case that navigation was a branch of commerce. In Brown *v.* Maryland, 12 Wheaton, 419, it was said that commerce includes "trade, traffic, intercourse." In Railroad *v.* Fuller, 17 Wall., 568, it was said, "Commerce is traffic, but it is much more. It embraces also transportation by land and water and all the means and appliances necessarily employed in carrying it on." In Gloucester Ferry Company *v.* Pennsylvania, 114 U. S., 196, it was held, "Commerce among the States consists of intercourse and traffic between the citizens and includes transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities."

33 It was further held in that case that "the power also embraces within its control all the instrumentalities by which commerce may be carried on and the means by which it may be aided and encouraged." In County of Mobile *v.* Kimball, 102 U. S., 691, it was said: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." In Wabash, etc., Railway Company *v.* Illinois, 118 U. S., 557, 558, Mr. Justice Miller uses this language: "This court holds now, and has never consciously held otherwise, that a statute of a State intended to regulate or to tax or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one State to another is not within that class of legislation which the States may enact in the absence of legislation by Congress, and that such statutes are void even as to that part of such transmission which may be within the State." It may be deduced from these decisions that, in general, commerce comprehends traffic, intercourse, navigation, and the transportation of persons and property, and the means and instrumentalities by which these four things are effectuated. If, therefore, the law under consideration seeks to regulate or restrict any one of these four forms of commerce among the States, or if it seeks to burden any instrumentality by which they are carried on, it is void and must be so declared. Dealing with these four branches of commerce in the order named, we will inquire, first, whether the business of

34 "hiring laborers in this State, to be employed beyond the limits of the same," is traffic. Traffic is "commerce; trade; sale or exchange of merchandise, bills, money, and the like."—Bouvier. "The passing of goods or commodities from one person to another for an equivalent in goods or money."—Anderson. As applied to interstate commerce, it has been defined to be "The sale by itinerant venders in one State of the goods, wares, and merchandise of other States, and the regulation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made."—11 Am. & Eng. Enc. (1st ed.), p. 544 (n.). We do not think the business of

procuring labor contracts to be performed in another State can be properly denominated traffic. Labor is not an article of merchandise or a commodity. It is toil, mental and physical. It is a part of the person himself, which he may dispose of, it is true, but which is not severable from him, and which accompanies him wherever he goes. It will not be pretended that persons are the subjects of commerce. Indeed, even when slavery existed in this country, a case arose in which the right of a State to regulate the admission into its territory of slaves from other States was incidentally involved, and the majority of the judges of the Supreme Court as it was then constituted were of the opinion that the State had such right, it not being a regulation of commerce among the States within the meaning of the Constitution of the United States. Groves *v.* Slaughter, 15 Pet., 448. See also Com. *v.* Griffin, 42 Ky., 202.

35 Is the law a regulation or restriction of intercourse among the citizens of this State and those of other States? Under this branch of commerce the States are prohibited from passing any law which either restricts the free passage of the citizens of the United States through the several States or which undertakes to regulate or restrict free communication between the citizens of the several States. A tax on the right of a citizen to leave the State or on the right of a citizen of another State to come into the State is a regulation of interstate commerce and void. Crandall *v.* Nevada, 6 Wall., 35; Henderson *v.* The Mayor, 92 U. S., 259; People *v.* Campagnie Generale Transatlantique, 107 U. S., 59; Passenger cases, 7 How., 282. Nor can a State pass a law which attempts to regulate or restrict communication between the citizens of different States. Western Union Tel. Co. *v.* Pendleton, 122 U. S., 347; Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S., 1. But the law under consideration in the present case neither regulates nor restricts the right of citizens of this State to leave its territory at will, nor to hold free communication with the citizens of other States. The citizen may leave when he pleases, but the person who makes it a business of inducing him to go to perform labor elsewhere must pay an occupation tax. This is certainly no infringement upon the right of the citizen. Nor does the law impose any burden upon any instrumentality by which his free intercourse with the citizens of other States is effectuated. The law certainly has no reference to navigation.

36 Nor do we think it is a regulation of transportation among the States. A State has no right to impose a burden upon the means by which persons or property may be transported from one State to another. Morgan *v.* New Orleans, 112 U. S., 69; Gloucester Ferry Company *v.* Pennsylvania, 114 U. S., 196. Nor can a State tax an agent of a company engaged in interstate transportation, as was held in McCall *v.* California, 136 U. S., 104.

But this law imposes no burden upon transportation companies or their agents. Its connection with transportation is exceedingly remote. That the business of hiring laborers to go beyond the State may increase the business of those engaged in interstate transporta

tion it is true, but it is not interstate transportation itself, and consequently not for this reason contrary to the interstate commerce clause of the Federal Constitution.

We are aware that the supreme court of Alabama in Joseph *v.* Randolph, 71 Ala., 499; S. C., 46 Am. Rep., 347, held an act similar to the one involved in the present case contrary to the interstate commerce clause of the Constitution of the United States, but we cannot give our assent to the reasoning upon which that decision was based. The decision in State *v.* Moore, 113 N. C., 697, cited in the argument, was based upon provisions of the State constitution and has no bearing upon this question. No decision of the Supreme Court of the United States was cited, nor have we been able to find any in line with the ruling made in the Alabama case. Some of the language used by different members of the court when
37 dealing with the subject of interstate commerce may be broad enough to include a law of the character involved in the present case, but this is not true of any decision of that court. The court itself has gone very far in its construction of the commerce clause of the Constitution, and we are unwilling to extend the construction farther than its decisions demand.

We conclude that the provision of the general tax act of 1898, imposing a tax upon emigrant agents doing business in this State, is not a regulation of or restriction upon any business which is properly comprehended within the terms commerce among the States; and, this being so, the law will be held to be valid, notwithstanding it may place a burden upon a business which may be an aid to, but not a part of, commerce among the States.

3. It is claimed that the imposition of the tax is an interference with the right of a citizen to move from one State to another, and therefore the statute imposing it is a law which abridges "the privileges and immunities of citizens of the United States" within the meaning of the fourteenth amendment to the Constitution of the United States. That this objection is without merit will sufficiently appear from what is above said in dealing with the question as to whether the law under consideration is a regulation of interstate commerce.

It is further contended that the law imposing the tax is invalid because it is violation of that provision of the 14th amendment to the Constitution of the United States which declares that no
38 State shall deny to any person within its jurisdiction the equal protection of the laws, the contention being that the taxing of persons engaged in hiring laborers within the State to perform labor beyond the limits of the State, and the failure to tax persons hiring laborers to work within the State, is such a discrimination as to be violative of that provision of the Constitution above referred to. A similar objection was made to the act of 1876, and was held by this court not to be well taken in the case of Shepperd *v.* Commissioners, 59 Ga, 535. To quote the language of Judge Bleckley in that case is all that is necessary to show that the law is not subject to the objection made. It is there said, referring to the act of 1876: "The act seems to us constitutional. It requires a

license as preliminary to carrying on a certain business, and exacts a license fee of one hundred dollars, which fee becomes county revenue. Whoever engages in the business is equally subject to the terms and provisions of the act. No discrimination is made in favor of residents over non-residents. It is said that the discrimination lies in requiring an expensive license as a condition of hiring laborers within the State to be employed beyond the State, without imposing a like burden on hiring for employment within the limits of the State. But the license required is for carrying on a business, and it does not appear that hiring for internal employment has become a business here, or is pursued as such by any person or persons. This is enough to dispose of the objection. But if it were otherwise, no authority has been
39 cited, and we know of none, that would prevent the State from acting upon occupations (carried on within the State) in a way to incumber some of them with a tax or license fee and leave other occupations, dissimilar in tendency, though not in nature, to the free will of those who might be inclined to engage in them. Suppose two rival establishments were in active operation in our midst, one engaged in offering the laboring population inducements to leave and the other engaged in offering them inducements to remain, could not the State discriminate between the two in police and fiscal legislation? Would she be obliged to grant the same indulgence and show the same favor to an instrumentality which tended to depopulate her territory as to one of opposite tendency? It is true that to go out of the State for employment is not necessarily to remove or withdraw permanently; but doubtless a large percentage of hirelings who go out on contracts of employment never return. Persons who make it a business to hire laborers here for employment elsewhere may be required to procure and pay for a license." It was insisted in the argument that the decision just referred to was unsound, and permission was asked and granted to review the same with a view to having it overruled. We are satisfied, however, that the conclusion reached in that case was correct, and we adhere to the decision therein rendered.

4. It was claimed that the law was violative of those provisions of the constitution of this State which are embodied in sections 5699, 5722, 5732, 5733, 5735, 5771, 5883 of the Civil Code. In what
40 way the law violates these different provisions of the constitution is not set forth in the pleadings, nor is any reason assigned in the brief of counsel why the law is in conflict with them. We have been unable to discover any antagonism between the law and the clauses of the constitution referred to. The right of the legislature to tax occupations and classify the same for taxation is so well settled now that such an objection needs nothing more than a passing notice. If the legislation now under review is violative of any provision of the State or Federal constitution our attention has not been called to the same, nor are we ourselves aware of any.

There being nothing in the Constitution of the United States which prohibits this State from dealing with this subject, and there being nothing in the constitution of the State which prohibits the

General Assembly from enacting the law in question, it follows that the judge of the superior court did not err in remanding the accused to the custody of the officer having him in charge, to be held by him until discharged by due process of law.

Judgment affirmed, all the justices concurring.

41 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the supreme court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

42 Supreme court of the State of Georgia.

ATLANTA, GA., *April* 11, 1900.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

R. A. WILLIAMS
versus
EDGAR FEARS, Sheriff, *et al.*

This case came before this court upon a writ of error from the superior court of Morgan county, and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed, all the justices concurring.

Bill of costs, $10.00.

Supreme court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *May* 19, 1900.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Jas. Davison paid the above bill of costs.

Witness my signature and the seal of said court, affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

43 Clerk's office, supreme court of Georgia.

ATLANTA, *May* 19, 1900.

I hereby certify that the foregoing pages hereto attached contain a complete record in the case of R. A. Williams, plaintiff in error,

v. Edgar Fears *et al.*, defendants in error, as appears from the records and files of this office, the said record consisting of the original writ of error and citation, copies of the petition for writ of error, bond and assignments of error, and of the original bill of exceptions and transcript of record, and of the opinion and judgment of the supreme court of Georgia.

Witness my signature and the seal of said court, hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

Endorsed on cover: File No., 17,771. Georgia supreme court. Term No., 287. R. A. Williams, plaintiff in error, *vs.* Edgar Fears, sheriff, and R. B. Aycock, jailer. Filed May 21st, 1900.

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